

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RHONSHAWN JACKSON,
Plaintiff

V.

SGT. O'BRIEN, et al.
Defendants

Case No. 1:18-cv-00032-RAL (Erie)

HON. RICHARD A. LANZILLO
UNITED STATES MAGISTRATE JUDGE

ORDER REGARDING EVIDENTIARY
HEARING

The Court has scheduled an evidentiary hearing in this matter pursuant to *Small v. Camden County*, 728 F.3d 265 (3d Cir. 2013) for September 24, 2021, beginning at 9:00 A.M. The purpose of this Order is to inform the Parties of the purpose of this hearing and the procedures that will be followed. *See Paladino v. Newsome*, 885 F.3d 203 (3d Cir. 2018). In the Court's opinion on the Defendants' motion for summary judgment filed on March 16, 2021, the Court determined that there are genuine disputes of material fact on whether an appeal remedy within the administrative grievance process was available to Jackson following the denial of his grievance regarding the monitoring and alleged seizing of his mail. ECF No. 82. Afterwards, the Court granted the Defendants' motion to present evidence and argument regarding the affirmative defense of failure to exhaust administrative remedies as to the claim identified by the Court in its opinion at ECF No. 82 on Plaintiff's motion for reconsideration that Defendant O'Brien engaged in retaliation by denying the Plaintiff law library privileges. ECF No. 97.

The purpose of this hearing is to provide the Court with additional evidence so that it can resolve these issues. **This is not a hearing on the merits of the Plaintiff's claims.** The Plaintiff has the burden to produce evidence to show that the grievance process and remedies were unavailable to him. *Rinaldi v. United States*, 904 F.3d 257, 268 (3d Cir. 2018). Because the failure to

exhaust administrative remedies is an affirmative defense, however, the Defendants bear the ultimate burden of proof regarding that defense. *Small*, 728 F.3d at 271.

The hearing will be conducted via **Zoom Video Conference**, before the Honorable Richard A. Lanzillo, United States Magistrate Judge. The hearing is scheduled for **Friday, September 24, beginning at 9:00 A.M.** Instructions for accessing the Zoom Video Conference will be sent to Counsel for the Defendants prior to the hearing. The Court directs Counsel to coordinate the Plaintiff's participation with the relevant institutions. Court staff are available for logistical assistance.

Both Jackson and the Defendants will be permitted to present and cross-examine witnesses and offer exhibits, all subject to the applicable procedural and evidentiary rules. The Federal Rules of Evidence and the Federal Rules of Civil procedure apply. Jackson may need to submit a motion for a Writ ad Testificandum. Such writs are normally employed to secure the presence of a witness or party for a court proceeding. *See, e.g., Reynolds v. Kosik*, 2007 WL 675110, at *1 n. 1 (M.D. Pa. Mar. 1, 2007). However, as has been done in other similar proceedings, if Jackson's witnesses are all located in the same correctional institution as he, an informal arrangement to have them testify may be agreed-to by the Parties.

At least eleven days before the date of the hearing, on or before September 13, 2021, Jackson shall file a list of the individuals he intends to call as witnesses during the hearing. As to each such witness, Jackson should briefly state the subject matter of his/her anticipated testimony. At least three days prior to the hearing, on or before September 21, 2021, Defendants shall file and serve upon Jackson their list of anticipated witness and, as to each witness, his/her anticipated testimony.

Following the conclusion of this hearing, an official transcript will be produced. At the conclusion of the hearing, the Court will advise the parties whether they will be required to submit proposed findings of fact and conclusions of law.

Entered and Ordered this 20th day of August, 2021.



RICHARD A. LANZILLO
United States Magistrate Judge